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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,625

09/29/2003

Lauren D. Worley

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09/29/2005

LEYDIG, VOIT & MAYER, LTD.  
(SEATTLE OFFICE)  
TWO PRUDENTIAL PLAZA  
SUITE 4900  
CHICAGO, IL 60601-6780

EXAMINER

NELSON, JAMES T

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/674,625	<b>Applicant(s)</b> WORLEY ET AL.	
	<b>Examiner</b> James T. Nelson	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/4/04 and 3/11/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

*Handwritten signature/initials*

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed 3/4/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. The examiner did not receive the four-page non-patent literature publication "Spring 2004 Camping Gear".

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8-11, and 17-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vavra (U.S. Patent 6,021,796).

Regarding claim 1: In Fig. 1, Vavra shows a tent (1), comprising: a lower portion formed of a water-repellent material (3); an upper portion formed of a mesh material (133); and a vent in the lower portion (160). Vavra claims a tent with a "flexible covering" comprising a "weather resistant, resiliently stretchable fabric" or "polyester with a urethane coating" which is a water-repellent material.

Regarding claim 2: In Fig. 1, Vavra shows the tent of claim 1 (1), wherein an open side of the vent (160) faces downward when the tent (1) is set up.

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Regarding claim 3: In Fig. 6A, Vavra shows the tent of claim 1 (1), wherein the vent (160) comprises an upper flap (163), a lower flap (4), and a flexible stay (168) extending between the upper flap (163) and the lower flap (4).

Regarding claim 8: In Fig. 6A, Vavra shows the tent of claim 1 (1), wherein the flexible stay (168) is configured and arranged such that the flexible stay (168) is resilient enough to support the vent during use, but is flexible enough so that the vent may be collapsed during storage.

Regarding claim 9: In Fig. 2, Vavra shows the tent of claim 1 further comprising a rain fly (F) positioned above at least a portion of the upper portion (133).

Regarding claim 10: In Fig. 2, Vavra shows the tent of claim 9, wherein the rain fly (F) comprises an apex (A) and a vent (160) adjacent the apex (A).

Regarding claim 11: In Fig. 6A, Vavra shows a vent (160) for a fabric structure (1), comprising: an upper flap (163), a lower flap (4), and flexible stay (168) extending between the upper flap (163) and the lower flap (4).

Regarding claim 17: In Fig. 6A, Vavra shows the vent of claim 11 (160), wherein the flexible stay (168) is resilient enough to support the vent (160) during use, but is flexible enough so that the vent (160) may be collapsed during storage.

Regarding claim 18: In Fig. 6A, Vavra shows the vent of claim 11 (160), wherein the fabric structure is a tent.

Regarding claim 19: In Fig. 6A, Vavra shows the vent of claim 11 (160), wherein the fabric structure is a rain fly for a tent.

Regarding claim 20: In Fig. 6A, Vavra shows the vent of claim 11 (160), wherein the fabric structure is a canopy.

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Regarding claim 21: In Fig. 2, Vavra shows a canopy comprising the vent (160) of claim 11.

Regarding claim 22: In Fig. 2, Vavra shows a tent comprising a rain fly (F) including the vent (160) of claim 11.

4. Claims 11-12 and 15-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Swetish (U.S. Patent 6,499,497).

Regarding claim 11: In Fig. 9, Swetish shows a vent (16) for a fabric structure, comprising: an upper flap (106), a lower flap (102) and a flexible stay (94) extending between the upper flap (106) and the lower flap (102).

Regarding claim 12: In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 11, including a flexible stay (94) comprising a plurality of segments. On line 27 of column 6, Swetish discloses a fly pole (94) comprising “four substantially straight tubes or sections connected by a ‘bungy’ cord.”

Regarding claim 15: In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 12, including a flexible stay (94) comprising a plurality of segments. On line 27 of column 6, Swetish discloses a fly pole (94) comprising “four substantially straight tubes or sections connected by a ‘bungy’ cord.”

Regarding claim 16: In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 12, claim 12, wherein the flexible stay (94) further comprises means for biasing the segments into a position to maintain the vent open. On line 27 of column 6, Swetish discloses a fly pole (94) comprising “four substantially straight tubes or sections connected by a ‘bungy’ cord.” The “bungy cord” is means for biasing the segments to maintain the vent open.

Regarding claim 17: In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 11, wherein the flexible stay is configured and arranged such that the flexible stay is resilient

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enough to support the vent during use, but is flexible enough so that the vent may be collapsed during storage.

Regarding claim 18: In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 11, wherein the fabric structure is a tent.

Regarding claim 19: In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 11, wherein the fabric structure is a rain fly for a tent.

Regarding claim 20: In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 11, wherein the fabric structure is a canopy.

Regarding claim 21: In Fig. 9, Swetish shows a canopy comprising the vent of claim 11.

Regarding claim 22: In Fig. 9, Swetish shows a tent comprising a rain fly including the vent of claim 11.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vavra (U.S. Patent 6,021,796), in view of Swetish (U.S. Patent 6,499,497).

Regarding claim 4: In Fig. 6A, Vavra shows the tent of claim 3, wherein the vent (160) comprises an upper flap (163), a lower flap (4), and a flexible stay (168) extending between the upper flap (163) and the lower flap (4), but lacks a flexible stay comprising a plurality of segments. In Fig. 9, Swetish teaches a flexible stay comprising a plurality of segments (94).

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On line 27 of column 6, Swetish teaches a fly pole (94) comprising “four substantially straight tubes or sections connected by a ‘bungy’ cord.” It would have been obvious to one skilled in the art at the time of invention to incorporate the plurality of segments of Swetish with the flexible vent stay of Vavra in order to facilitate compact storage of the vent stay.

Regarding claim 6: In Fig. 6, Vavra shows the tent of claim 4, but lacks a flexible stay further comprising an elastic cord extending through the segments and tensioning the segments together. On line 27 of column 6, Swetish teaches a fly pole (94) comprising “four substantially straight tubes or sections connected by a ‘bungy’ cord.” It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the elastic ‘bungy’ cord and segments of Swetish with vent stay of Vavra in order to allow for a flexible, storable vent stay.

7. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vavra (U.S. Patent 6,021,796), in view of Swetish (U.S. Patent 6,499,497), and further in view of Joo-Tai (U.S. Patent 6,286,531).

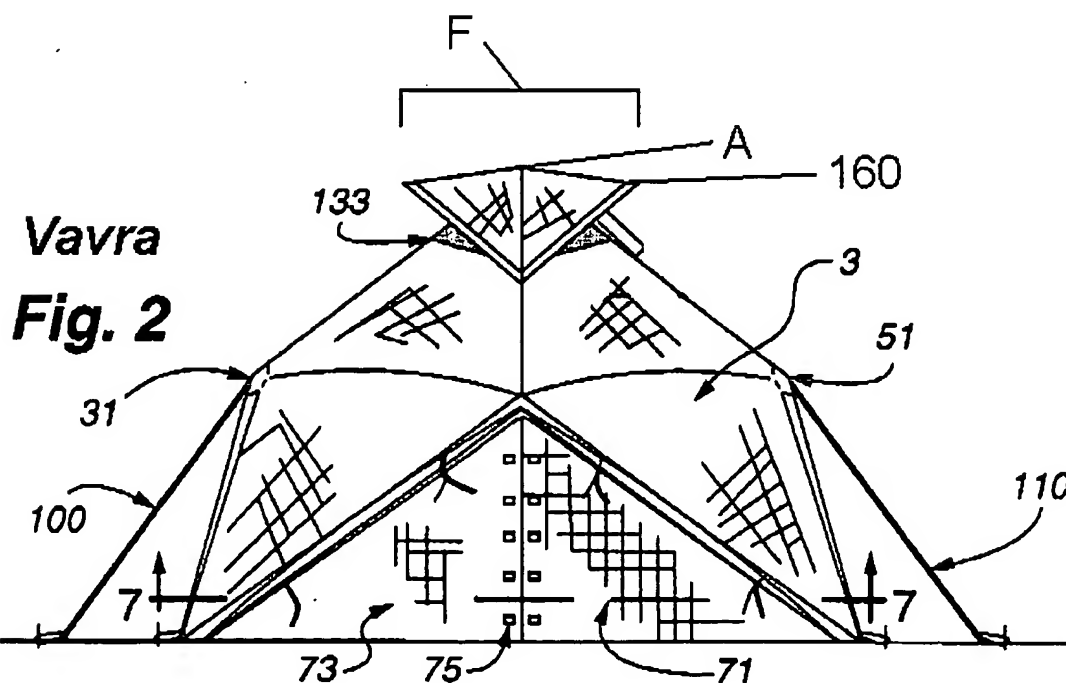
Regarding claim 5: In Fig. 6, Vavra, as modified by Swetish, shows the tent of claim 4, but lacks segments each comprising adjacent flat edges. In Fig. 2a, Joo-Tai teaches segments (1', 1'') each comprising adjacent flat edges (4, 4'). It would have been obvious to one of ordinary skill in the art at the time of invention to use the segments comprising adjacent flat edges of Joo-Tai in the vent stay of Vavra, as modified by Swetish to allow the segments to support each other.

Regarding claim 7: In Fig. 6, Vavra, as modified by Swetish, shows the tent of claim 4, but lacks a flexible stay further comprising means for biasing the segments into position to maintain the vent open. In Fig. 2b, Joo-Tai teaches means for biasing the segments into

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position (7). It would have been obvious to one of ordinary skill in the art at the time of invention to use the means for biasing the segments into position of Joo-Tai in the vent stay of Vavra, as modified by Swetish, in order to hold the vent open.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swetish (U.S. Patent 6,499,497) in view of Joo-Tai (U.S. Patent 6,286,531). In Fig. 9, Swetish shows the vent (16) for a fabric structure of claim 12. On line 27 of column 6, Swetish teaches a fly pole (94) comprising "four substantially straight tubes or sections connected by a 'bungy' cord." Swetish lacks segments each comprising adjacent flat edges. In Fig. 2a, Joo-Tai teaches segments (1', 1'') each comprising adjacent flat edges (4, 4'). It would have been obvious to one of ordinary skill in the art at the time of invention to use the segments comprising adjacent flat edges of Joo-Tai in the vent stay of Swetish in order to allow the segments support each other.






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*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moakley, Mitchell, Smith, Marks, Barker, Mydans, Jarnot, Zheng, Bamber, Garrigues, Cunningham, Cantwell, Robinson, Griesenbeck, Russell, Nichols, and Hayashida all show aspects of the described invention.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James T. Nelson whose telephone number is (571) 272-1491. The examiner can normally be reached M-F 8:00am - 4:30pm.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTN   
09/19/2005

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